

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 98**

Introduced by Hartnett, 45

Read first time January 9, 2003

Committee: Revenue

A BILL

- 1 FOR AN ACT relating to the Employment and Investment Growth Act; to
- 2 amend sections 77-4103 and 77-4104, Revised Statutes
- 3 Supplement, 2002; to change employment requirements; and
- 4 to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-4103, Revised Statutes Supplement,  
2   2002, is amended to read:

3           77-4103. For purposes of the Employment and Investment  
4   Growth Act, unless the context otherwise requires:

5           (1) Any term shall have the same meaning as used in  
6   Chapter 77, article 27;

7           (2) Base year shall mean the year immediately preceding  
8   the year during which the application was submitted;

9           (3) Base-year employee shall mean any individual who was  
10   employed in Nebraska and subject to the Nebraska income tax on  
11   compensation received from the taxpayer or its predecessors during  
12   the base year and who is employed at the project;

13          (4) Compensation shall mean the wages and other payments  
14   subject to withholding for federal income tax purposes;

15          (5) County average annual wage shall mean the most recent  
16   average annual wage paid by all employers in a county or in the  
17   state, whichever is lower, for the most recent calendar year  
18   reported as of July 1 by the Department of Labor. County average  
19   annual wage for a project located in more than one county shall  
20   mean the county average annual wages for each county in which the  
21   project is located, multiplied by the total of the average annual  
22   total employment for each county in which the project is located,  
23   summing the projects for all counties in which the project is  
24   located, then dividing the result by the average annual total  
25   employment for all counties in which the project is located;

26          (6) Entitlement period shall mean the year during which  
27   the required increases in employment and investment were met or  
28   exceeded, and the next six years;

1           ~~(6)~~ (7) Equivalent employees shall mean the number of  
2 employees computed by dividing the total hours paid in a year by  
3 the product of forty times the number of weeks in a year;

4           ~~(7)~~ (8) Investment shall mean the value of qualified  
5 property incorporated into or used at the project. For qualified  
6 property owned by the taxpayer, the value shall be the original  
7 cost of the property. For qualified property rented by the  
8 taxpayer, the average net annual rent shall be multiplied by the  
9 number of years of the lease for which the taxpayer was originally  
10 bound, not to exceed ten years or the end of the third year after  
11 the entitlement period, whichever is earlier. The rental of land  
12 included in and incidental to the leasing of a building shall not  
13 be excluded from the computation;

14           ~~(8)~~ (9) Motor vehicle shall mean any motor vehicle,  
15 trailer, or semitrailer as defined in section 60-301 and subject to  
16 licensing for operation on the highways;

17           ~~(9)~~ (10) Nebraska employee shall mean an individual who  
18 is either a resident or partial-year resident of Nebraska;

19           ~~(10)~~ (11) Number of new employees shall mean the excess  
20 of the number of equivalent employees employed at the project  
21 during a year over the number of equivalent employees during the  
22 base year;

23           ~~(11)~~ (12) Qualified business shall mean any business  
24 engaged in the activities listed in subdivisions (b)(i) through (v)  
25 of this subdivision or in the storage, warehousing, distribution,  
26 transportation, or sale of tangible personal property. Qualified  
27 business shall not include any business activity in which eighty  
28 percent or more of the total sales are sales to the ultimate

1 consumer of food prepared for immediate consumption or are sales to  
2 the ultimate consumer of tangible personal property which is not  
3 (a) assembled, fabricated, manufactured, or processed by the  
4 taxpayer or (b) used by the purchaser in any of the following  
5 activities:

6 (i) The conducting of research, development, or testing  
7 for scientific, agricultural, animal husbandry, food product, or  
8 industrial purposes;

9 (ii) The performance of data processing,  
10 telecommunication, insurance, or financial services. Financial  
11 services for purposes of this subdivision shall only include  
12 financial services provided by any financial institution subject to  
13 tax under Chapter 77, article 38, or any person or entity licensed  
14 by the Department of Banking and Finance or the Securities and  
15 Exchange Commission;

16 (iii) The assembly, fabrication, manufacture, or  
17 processing of tangible personal property;

18 (iv) The administrative management of any activities,  
19 including headquarter facilities relating to such activities; or

20 (v) Any combination of the activities listed in this  
21 subdivision;

22 ~~(12)~~ (13) Qualified employee leasing company shall mean a  
23 company which places all employees of a client-lessee on its  
24 payroll and leases such employees to the client-lessee on an  
25 ongoing basis for a fee and, by written agreement between the  
26 employee leasing company and a client-lessee, grants to the  
27 client-lessee input into the hiring and firing of the employees  
28 leased to the client-lessee;

1           ~~(13)~~ (14) Qualified property shall mean any tangible  
2 property of a type subject to depreciation, amortization, or other  
3 recovery under the Internal Revenue Code of 1986, or the components  
4 of such property, that will be located and used at the project.  
5 Qualified property shall not include (a) aircraft, barges, motor  
6 vehicles, railroad rolling stock, or watercraft or (b) property  
7 that is rented by the taxpayer qualifying under the Employment and  
8 Investment Growth Act to another person;

9           (15) Qualifying wage shall mean the greater of one  
10 hundred twenty-five percent of the county average annual wage in  
11 the county or counties in which the project is located or one  
12 hundred percent of the regional average annual wage in the region  
13 or regions in which the project is located;

14           (16) Region shall mean the following regions:

15           (a) Panhandle region, composed of the counties of Banner,  
16 Box Butte, Cheyenne, Dawes, Duel, Garden, Kimball, Morrill, Scotts  
17 Bluff, Sheridan, and Sioux;

18           (b) Mid-plains region, composed of the counties of  
19 Arthur, Chase, Cherry, Dawson, Dundy, Frontier, Furnas, Gosper,  
20 Grant, Hayes, Hitchcock, Hooker, Keith, Lincoln, Logan, McPherson,  
21 Perkins, Red Willow, and Thomas;

22           (c) Central region, composed of the counties of Adams,  
23 Blaine, Buffalo, Clay, Custer, Franklin, Garfield, Greeley, Hall,  
24 Hamilton, Harlan, Howard, Kearney, Loup, Merrick, Nance, Nuckolls,  
25 Phelps, Sherman, Valley, Webster, and Wheeler;

26           (d) Northeast region, composed of the counties of  
27 Antelope, Boone, Boyd, Brown, Burt, Cedar, Colfax, Cuming, Dakota,  
28 Dixon, Dodge, Holt, Keya Paha, Knox, Madison, Pierce, Platte, Rock,

1 Stanton, Thurston, and Wayne;

2 (e) Southeast region, composed of the counties of Butler,  
3 Fillmore, Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Polk,  
4 Richardson, Saline, Saunders, Seward, Thayer, and York;

5 (f) Omaha region, composed of the counties of Douglas,  
6 Sarpy, Cass, and Washington; and

7 (g) Lincoln region, composed of the county of Lancaster;

8 (17) Regional average annual wage, for a project located  
9 in one region, shall mean the most recent average annual wage paid  
10 by all employers in the region for the most recent calendar year  
11 calculated by multiplying the average annual wage for each county  
12 in the region for the most recent calendar year reported as of July  
13 1 by the Department of Labor by the corresponding average annual  
14 total employment in each county, summing the products for all  
15 counties in the region, and then dividing the result by the average  
16 annual total employment of all counties in the region. Regional  
17 average annual wage, for a project located in more than one region,  
18 shall mean the regional average annual wage for each region in  
19 which the project is located, multiplied by the total of the  
20 average annual total employment for each region in which the  
21 project is located, the product then divided by the sum of the  
22 average annual total employment for the regions;

23 ~~(14)~~ (18) Related persons shall mean any corporations,  
24 partnerships, limited liability companies, or joint ventures which  
25 are or would otherwise be members of the same unitary group, if  
26 incorporated, or any persons who are considered to be related  
27 persons under either section 267(b) and (c) or section 707(b) of  
28 the Internal Revenue Code of 1986;

1           ~~(15)~~ (19) Taxpayer shall mean any person subject to the  
2 sales and use taxes and either an income tax imposed by the  
3 Nebraska Revenue Act of 1967 or a franchise tax under sections  
4 77-3801 to 77-3807, any corporation, partnership, limited liability  
5 company, or joint venture that is or would otherwise be a member of  
6 the same unitary group, if incorporated, which is, or whose  
7 partners, members, or owners are, subject to such taxes, and any  
8 other partnership, limited liability company, S corporation, or  
9 joint venture when the partners, shareholders, or members are  
10 subject to such taxes; and

11           ~~(16)~~ (20) Year shall mean the taxable year of the  
12 taxpayer.

13           The changes made in this section by Laws 1997, LB 264,  
14 apply to investments made or employment on or after January 1,  
15 1997, and for all agreements in effect on or after January 1, 1997.  
16 The changes made in this section by this legislative bill shall  
17 apply to applications filed on or after the effective date of this  
18 act.

19           Sec. 2. Section 77-4104, Revised Statutes Supplement,  
20 2002, is amended to read:

21           77-4104. (1) In order to utilize the incentives set  
22 forth in the Employment and Investment Growth Act, the taxpayer  
23 shall file an application for an agreement with the Tax  
24 Commissioner.

25           (2) The application shall contain:

26           (a) A written statement describing the plan of employment  
27 and investment for a qualified business in this state;

28           (b) Sufficient documents, plans, and specifications as

1 required by the Tax Commissioner to support the plan and to define  
2 a project;

3 (c) If more than one location within this state is  
4 involved, sufficient documentation to show that the employment and  
5 investment at different locations are interdependent parts of the  
6 plan. A headquarters shall be presumed to be interdependent with  
7 any other location directly controlled by such headquarters. A  
8 showing that the parts of the plan would be considered parts of a  
9 unitary business for corporate income tax purposes shall not be  
10 sufficient to show interdependence for the purposes of this  
11 subdivision;

12 (d) A nonrefundable application fee of five hundred  
13 dollars. The fee shall be deposited into the Employment and  
14 Investment Growth Fund, which fund is hereby created. Any money in  
15 the fund available for investment shall be invested by the state  
16 investment officer pursuant to the Nebraska Capital Expansion Act  
17 and the Nebraska State Funds Investment Act; and

18 (e) A timetable showing the expected sales tax refunds  
19 and what year they are expected to be claimed. The timetable shall  
20 include both direct refunds due to investment and credits taken as  
21 sales tax refunds as accurately as possible.

22 The application and all supporting information shall be  
23 confidential except for the name of the taxpayer, the location of  
24 the project, the amounts of increased employment and investment,  
25 and the information required to be reported by sections 77-4110 and  
26 77-4113.

27 (3) Once satisfied that the plan in the application  
28 defines a project consistent with the purposes stated in section



1 77-4102 in one or more qualified business activities within this  
2 state, that the plans will result in either (a) the investment in  
3 qualified property of at least three million dollars and the hiring  
4 of at least thirty new employees whose average annual pay will be  
5 at least the qualifying wage or (b) the investment in qualified  
6 property resulting in a net gain in the total value of tangible  
7 property in this state of a type subject to depreciation,  
8 amortization, or other recovery under the Internal Revenue Code of  
9 1986 of at least twenty million dollars, and that the required  
10 levels of employment and investment for the project will be met  
11 prior to the end of the sixth year after the year in which the  
12 application was submitted, the Tax Commissioner shall approve the  
13 application. In determining the net gain in value for purposes of  
14 this subsection, all tangible personal property shall be valued in  
15 a manner consistent with the value determined for qualified  
16 property, and the total value on the last day of each year shall be  
17 compared with the total value on the last day of the base year.

18 (4) After approval, the taxpayer and the Tax Commissioner  
19 shall enter into a written agreement. The taxpayer shall agree to  
20 complete the project, and the Tax Commissioner, on behalf of the  
21 State of Nebraska, shall designate the approved plans of the  
22 taxpayer as a project and, in consideration of the taxpayer's  
23 agreement, agree to allow the taxpayer to use the incentives  
24 contained in the Employment and Investment Growth Act. The  
25 application, and all supporting documentation, to the extent  
26 approved, shall be considered a part of the agreement. The  
27 agreement shall state:

28 (a) The levels of employment and investment required by

1 the act for the project;

2 (b) The time period under the act in which the required  
3 levels must be met;

4 (c) The documentation the taxpayer will need to supply  
5 when claiming an incentive under the act;

6 (d) The date the application was filed; and

7 (e) A requirement that the company update the Department  
8 of Revenue annually on any changes in plans or circumstances which  
9 affect the timetable of sales tax refunds as set out in the  
10 application. If the company fails to comply with this requirement,  
11 the Tax Commissioner may defer any pending sales tax refunds until  
12 the company does comply.

13 (5) The incentives contained in section 77-4105 shall be  
14 in lieu of the tax credits allowed by section 77-27,188 for any  
15 project. In computing credits under section 77-27,188, any  
16 investment or employment which is eligible for benefits under the  
17 Employment and Investment Growth Act shall be subtracted from the  
18 increases computed for determining the credits under section  
19 77-27,188.

20 (6) A taxpayer and the Tax Commissioner may enter into  
21 agreements for more than one project and may include more than one  
22 project in a single agreement. The projects may be either  
23 sequential or concurrent. A project may involve the same location  
24 as another project. No new employment or new investment shall be  
25 included in more than one project for either the meeting of the  
26 employment or investment requirements or the creation of credits.  
27 When projects overlap and the plans do not clearly specify, then  
28 the taxpayer shall specify in which project the employment and

1 investment belongs.

2           (7) The changes made in this section by this legislative  
3 bill shall apply to applications filed on after the effective date  
4 of this act.

5           Sec. 3. Original sections 77-4103 and 77-4104, Revised  
6 Statutes Supplement, 2002, are repealed.